

MAR 17 2003

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHRISTIAN IZQUIERDO,

Defendant - Appellant.

No. 02-50172

D.C. No.

CR-01-00128-RSWL-01

ORDER*

Appeal from the United States District Court
for the Central District of California
Ronald S.W. Lew, District Judge, Presiding

Argued and Submitted March 5, 2003
Pasadena, California

Before: LAY,** HAWKINS and TALLMAN, Circuit Judges.

Appellant-defendant Christian Izquierdo unconditionally pleaded guilty to
possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(B),

* This disposition is not appropriate for publication and may not be cited to or
by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** Honorable Donald P. Lay, Senior United States Circuit Judge for the
Eighth Circuit, sitting by designation.

thereby waiving his right to challenge on appeal the district court's denial of his motion to suppress evidence. Fed. R. Crim. Pro. 11(a)(2); see also United States v. Floyd, 108 F.3d 202, 203 (9th Cir. 1997). At the plea colloquy, however, the district court advised Izquierdo that he could appeal the court's denial of his motion to suppress evidence. Because the district court misinformed Izquierdo of his appellate rights, Izquierdo's plea was not knowingly and voluntarily made since Izquierdo may have believed that he could still appeal the adverse ruling on his motion to suppress evidence. See United States v. Cortez, 973 F.2d 764, 767-69 (9th Cir. 1992). We therefore order Izquierdo's conviction and sentence vacated and the matter remanded for further proceedings.

VACATED and REMANDED.